

107TH CONGRESS  
1ST SESSION

# H. R. 169

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IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2001

Received; read twice and referred to the Committee on Governmental Affairs

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## AN ACT

To require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws; to require that each Federal agency post quarterly on its public Web site, certain statistical data relating to Federal sector equal employment opportunity complaints filed with such agency; and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
 2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
 5       “Notification and Federal Employee Antidiscrimination  
 6       and Retaliation Act of 2001”.

7       (b) **TABLE OF CONTENTS.**—The table of contents of  
 8       this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—GENERAL PROVISIONS**

Sec. 101. Findings.

Sec. 102. Definitions.

Sec. 103. Effective date.

**TITLE II—FEDERAL EMPLOYEE DISCRIMINATION AND  
RETALIATION**

Sec. 201. Reimbursement requirement.

Sec. 202. Notification requirement.

Sec. 203. Reporting requirement.

Sec. 204. Rules and guidelines.

Sec. 205. Clarification of remedies.

Sec. 206. Study by General Accounting Office regarding exhaustion of adminis-  
trative remedies.

**TITLE III—EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT  
DATA DISCLOSURE**

Sec. 301. Data to be posted by employing Federal agencies.

Sec. 302. Data to be posted by the Equal Employment Opportunity Commis-  
sion.

Sec. 303. Rules.

9       **TITLE I—GENERAL PROVISIONS**

10       **SEC. 101. FINDINGS.**

11       The Congress finds that—

12               (1) Federal agencies cannot be run effectively if  
 13       they practice or tolerate discrimination,

1           (2) the Committee on the Judiciary of the  
2       House of Representatives has heard testimony from  
3       individuals, including representatives of the National  
4       Association for the Advancement of Colored People  
5       and the American Federation of Government Em-  
6       ployees that point to chronic problems of discrimina-  
7       tion and retaliation against Federal employees,

8           (3) in August 2000, a jury found that the Envi-  
9       ronmental Protection Agency had discriminated  
10      against a senior social scientist, and awarded that  
11      scientist \$600,000,

12          (4) in October 2000, an Occupational Safety  
13      and Health Administration investigation found that  
14      the Environmental Protection Agency had retaliated  
15      against a senior scientist for disagreeing with that  
16      agency on a matter of science and for helping Con-  
17      gress to carry out its oversight responsibilities,

18          (5) there have been several recent class action  
19      suits based on discrimination brought against Fed-  
20      eral agencies, including the Federal Bureau of Inves-  
21      tigation, the Bureau of Alcohol, Tobacco, and Fire-  
22      arms, the Drug Enforcement Administration, the  
23      Immigration and Naturalization Service, and the  
24      United States Marshals Service,

1           (6) notifying Federal employees of their rights  
2           under discrimination and whistleblower laws should  
3           increase agency compliance with the law,

4           (7) requiring annual reports to Congress on the  
5           number and severity of discrimination and whistle-  
6           blower cases brought against each Federal agency  
7           should enable Congress to improve its oversight over  
8           agencies' compliance with the law, and

9           (8) penalizing Federal agencies by requiring  
10          them to pay for any discrimination or whistleblower  
11          judgments, awards, and settlements should improve  
12          agency accountability with respect to discrimination  
13          and whistleblower laws.

14 **SEC. 102. DEFINITIONS.**

15          For purposes of this Act—

16           (1) the term “applicant for Federal employ-  
17           ment” means an individual applying for employment  
18           in or under a Federal agency,

19           (2) the term “basis of alleged discrimination”  
20           shall have the meaning given such term under sec-  
21           tion 303,

22           (3) the term “Federal agency” means an Exec-  
23           utive agency (as defined in section 105 of title 5,  
24           United States Code), the United States Postal Serv-  
25           ice, or the Postal Rate Commission,

1           (4) the term “Federal employee” means an in-  
2       dividual employed in or under a Federal agency,

3           (5) the term “former Federal employee” means  
4       an individual formerly employed in or under a Fed-  
5       eral agency, and

6           (6) the term “issue of alleged discrimination”  
7       shall have the meaning given such term under sec-  
8       tion 303.

9   **SEC. 103. EFFECTIVE DATE.**

10       This Act and the amendments made by this Act shall  
11   take effect on the 1st day of the 1st fiscal year beginning  
12   more than 180 days after the date of the enactment of  
13   this Act.

14   **TITLE II—FEDERAL EMPLOYEE**  
15       **DISCRIMINATION AND RETAL-**  
16       **IATION**

17   **SEC. 201. REIMBURSEMENT REQUIREMENT.**

18       (a) **APPLICABILITY.**—This section applies with re-  
19   spect to any payment made in accordance with section  
20   2414, 2517, 2672, or 2677 of title 28, United States  
21   Code, and under section 1304 of title 31, United States  
22   Code (relating to judgments, awards, and compromise set-  
23   tlements) to any Federal employee, former Federal em-  
24   ployee, or applicant for Federal employment, in connection

1 with any proceeding brought by or on behalf of such em-  
2 ployee, former employee, or applicant under—

3 (1) any provision of law cited in subsection (c),  
4 or

5 (2) any other provision of law which prohibits  
6 any form of discrimination, as identified under rules  
7 issued under section 204.

8 (b) REQUIREMENT.—An amount equal to the amount  
9 of each payment described in subsection (a) shall be reim-  
10 bursed to the fund described in section 1304 of title 31,  
11 United States Code, out of any appropriation, fund, or  
12 other account (excluding any part of such appropriation,  
13 of such fund, or of such account available for the enforce-  
14 ment of any Federal law) available for operating expenses  
15 of the Federal agency to which the discriminatory conduct  
16 involved is attributable as determined under section 204.

17 (c) SCOPE.—The provisions of law cited in this sub-  
18 section are the following:

19 (1) Section 2302(b) of title 5 of the United  
20 States Code, as applied to discriminatory conduct  
21 described in paragraphs (1) and (8), or described in  
22 paragraph (9) of such section as applied to discrimi-  
23 natory conduct described in paragraphs (1) and (8),  
24 of such section.

1           (2) The provisions of law specified in section  
2       2302(d) of title 5 of the United States Code.

3           (3) The Whistleblower Protection Act of 1986  
4       and the amendments made by such Act.

5   **SEC. 202. NOTIFICATION REQUIREMENT.**

6       (a) IN GENERAL.—Written notification of the rights  
7   and protections available to Federal employees, former  
8   Federal employees, and applicants for Federal employ-  
9   ment (as the case may be) in connection with the respec-  
10   tive provisions of law covered by paragraphs (1) and (2)  
11   of section 201(a) shall be provided to such employees,  
12   former employees, and applicants—

13           (1) in accordance with otherwise applicable pro-  
14       visions of law, or

15           (2) if to the extent that no such notification  
16       would otherwise be required, in such time, form, and  
17       manner as shall under section 204 be required in  
18       order to carry out the requirements of this section.

19       (b) POSTING ON THE INTERNET.—Any written noti-  
20   fication under this section shall include, but not be limited  
21   to, the posting of the information required under para-  
22   graph (1) or (2) (as applicable) of subsection (a) on the  
23   Internet site of the Federal agency involved.

24       (c) EMPLOYEE TRAINING.—Each Federal agency  
25   shall provide to the employees of such agency training re-

1   garding the rights and remedies applicable to such employ-  
2   ees under the laws cited in section 201(c).

3   **SEC. 203. REPORTING REQUIREMENT.**

4       (a) ANNUAL REPORT.—Subject to subsection (b), not  
5   later than 180 days after the end of each fiscal year, each  
6   Federal agency shall submit to the Speaker of the House  
7   of Representatives, the President pro tempore of the Sen-  
8   ate, the Equal Employment Opportunity Commission, and  
9   the Attorney General an annual report which shall include,  
10  with respect to the fiscal year—

11           (1) the number of cases arising under each of  
12       the respective provisions of law covered by para-  
13       graphs (1) and (2) of section 201(a) in which dis-  
14       crimination on the part of such agency was alleged,

15           (2) the status or disposition of cases described  
16       in paragraph (1),

17           (3) the amount of money required to be reim-  
18       bursed by such agency under section 201 in connec-  
19       tion with each of such cases, separately identifying  
20       the aggregate amount of such reimbursements at-  
21       tributable to the payment of attorneys' fees, if any,

22           (4) the number of employees disciplined for dis-  
23       crimination, retaliation, harassment, or any other in-  
24       fraction of any provision of law referred to in para-  
25       graph (1),



1           (5) the final year-end data posted under section  
2       301(c)(1)(B) for such fiscal year (without regard to  
3       section 301(c)(2)), and

4           (6) a detailed description of—

5               (A) the policy implemented by such agency  
6       to discipline employees who are determined in  
7       any judicial or administrative proceeding to  
8       have discriminated against any individual in  
9       violation of any of the laws cited in section  
10      201(c), and

11              (B) with respect to each of such laws, the  
12      number of employees who are disciplined in ac-  
13      cordance with such policy and the specific na-  
14      ture of the disciplinary action taken.

15      (b) FIRST REPORT.—The 1st report submitted under  
16      subsection (a) shall include for each item under subsection  
17      (a) data for each of the 5 immediately preceding fiscal  
18      years (or, if not available for all 5 fiscal years, for however  
19      many of those 5 fiscal years for which data are available).

20      **SEC. 204. RULES AND GUIDELINES.**

21      (a) ISSUANCE OF RULES AND GUIDELINES.—The  
22      President (or the designee of the President) shall issue—

23              (1) rules to carry out this title,

24              (2) rules to require that a comprehensive study  
25      be conducted in the Executive Branch to determine

1 the best practices for Federal agencies to take ap-  
2 propriate disciplinary actions against Federal em-  
3 ployees who are determined in any judicial or admin-  
4 istrative proceeding to have discriminated against  
5 any individual in violation of any of the laws cited  
6 in section 201(c), and

7 (3) based on the results of such study, advisory  
8 guidelines incorporating best practices that Federal  
9 agencies may follow to take such actions against  
10 such employees.

11 (b) AGENCY NOTIFICATION REGARDING IMPLEMEN-  
12 TATION OF GUIDELINES.—Not later than 30 days after  
13 the issuance of guidelines under subsection (a), each Fed-  
14 eral agency shall submit to the Speaker of the House of  
15 Representatives, the President pro tempore of the Senate,  
16 the Equal Employment Opportunity Commission, and the  
17 Attorney General a written statement specifying in  
18 detail—

19 (1) whether such agency has adopted and will  
20 fully follow such guidelines,

21 (2) if such agency has not adopted such guide-  
22 lines, the reasons for the failure to adopt such guide-  
23 lines, and

24 (3) if such agency will not fully follow such  
25 guidelines, the reasons for the decision not to fully

1 follow such guidelines and an explanation of the ex-  
2 tent to which such agency will not follow such guide-  
3 lines.

4 **SEC. 205. CLARIFICATION OF REMEDIES.**

5 Consistent with Federal law, nothing in this title shall  
6 prevent any Federal employee, former Federal employee,  
7 or applicant for Federal employment from exercising any  
8 right otherwise available under the laws of the United  
9 States.

10 **SEC. 206. STUDY BY GENERAL ACCOUNTING OFFICE RE-**  
11 **GARDING EXHAUSTION OF ADMINISTRATIVE**  
12 **REMEDIES.**

13 (a) STUDY.—Not later than 180 days after the date  
14 of the enactment of this Act, the General Accounting Of-  
15 fice shall conduct a study relating to the effects of elimi-  
16 nating the requirement that Federal employees aggrieved  
17 by violations of any of the laws specified in paragraphs  
18 (7) and (8) of section 201(c) exhaust administrative rem-  
19 edies before filing complaints with the Equal Employment  
20 Opportunity Commission. Such study shall include a de-  
21 tailed summary of matters investigated, of information  
22 collected, and of conclusions formulated that lead to deter-  
23 minations of how the elimination of such requirement  
24 will—

1 (1) expedite handling of allegations of such vio-  
2 lations within Federal agencies and will streamline  
3 the complaint-filing process,

4 (2) affect the workload of the Commission,

5 (3) affect established alternative dispute resolu-  
6 tion procedures in such agencies, and

7 (4) affect any other matters determined by the  
8 General Accounting Office to be appropriate for con-  
9 sideration.

10 (b) REPORT.—Not later than 90 days after comple-  
11 tion of the study required by subsection (a), the General  
12 Accounting Office shall submit to the Speaker of the  
13 House of Representatives, the President pro tempore of  
14 the Senate, the Equal Employment Opportunity Commis-  
15 sion, and the Attorney General a report containing the in-  
16 formation required to be included in such study.

17 **TITLE III—EQUAL EMPLOYMENT**  
18 **OPPORTUNITY COMPLAINT**  
19 **DATA DISCLOSURE**

20 **SEC. 301. DATA TO BE POSTED BY EMPLOYING FEDERAL**  
21 **AGENCIES.**

22 (a) IN GENERAL.—Each Federal agency shall post  
23 on its public Web site, in the time, form, and manner pre-  
24 scribed under section 303 (in conformance with the re-  
25 quirements of this section), summary statistical data relat-

1 ing to equal employment opportunity complaints filed with  
2 such agency by employees or former employees of, or ap-  
3 plicants for employment with, such agency.

4 (b) CONTENT REQUIREMENTS.—The data posted by  
5 a Federal agency under this section shall include, for the  
6 then current fiscal year, the following:

7 (1) The number of complaints filed with such  
8 agency in such fiscal year.

9 (2) The number of individuals filing those com-  
10 plaints (including as the agent of a class).

11 (3) The number of individuals who filed 2 or  
12 more of those complaints.

13 (4) The number of complaints (described in  
14 paragraph (1)) in which each of the various bases of  
15 alleged discrimination is alleged.

16 (5) The number of complaints (described in  
17 paragraph (1)) in which each of the various issues  
18 of alleged discrimination is alleged.

19 (6) The average length of time, for each step of  
20 the process, it is taking such agency to process com-  
21 plaints (taking into account all complaints pending  
22 for any length of time in such fiscal year, whether  
23 first filed in such fiscal year or earlier). Average  
24 times under this paragraph shall be posted—

25 (A) for all such complaints,

1 (B) for all such complaints in which a  
2 hearing before an administrative judge of the  
3 Equal Employment Opportunity Commission is  
4 not requested, and

5 (C) for all such complaints in which a  
6 hearing before an administrative judge of the  
7 Equal Employment Opportunity Commission is  
8 requested.

9 (7) The total number of final agency actions  
10 rendered in such fiscal year involving a finding of  
11 discrimination and, of that number—

12 (A) the number and percentage that were  
13 rendered without a hearing before an adminis-  
14 trative judge of the Equal Employment Oppor-  
15 tunity Commission, and

16 (B) the number and percentage that were  
17 rendered after a hearing before an administra-  
18 tive judge of the Equal Employment Oppor-  
19 tunity Commission.

20 (8) Of the total number of final agency actions  
21 rendered in such fiscal year involving a finding of  
22 discrimination—

23 (A) the number and percentage involving a  
24 finding of discrimination based on each of the  
25 respective bases of alleged discrimination, and

1 (B) of the number specified under sub-  
2 paragraph (A) for each of the respective bases  
3 of alleged discrimination—

4 (i) the number and percentage that  
5 were rendered without a hearing before an  
6 administrative judge of the Equal Employ-  
7 ment Opportunity Commission, and

8 (ii) the number and percentage that  
9 were rendered after a hearing before an  
10 administrative judge of the Equal Employ-  
11 ment Opportunity Commission.

12 (9) Of the total number of final agency actions  
13 rendered in such fiscal year involving a finding of  
14 discrimination—

15 (A) the number and percentage involving a  
16 finding of discrimination in connection with  
17 each of the respective issues of alleged discrimi-  
18 nation, and

19 (B) of the number specified under sub-  
20 paragraph (A) for each of the respective issues  
21 of alleged discrimination—

22 (i) the number and percentage that  
23 were rendered without a hearing before an  
24 administrative judge of the Equal Employ-  
25 ment Opportunity Commission, and

1                   (ii) the number and percentage that  
2                   were rendered after a hearing before an  
3                   administrative judge of the Equal Employ-  
4                   ment Opportunity Commission.

5           (10)(A) Of the total number of complaints  
6           pending in such fiscal year (as described in the par-  
7           enthetical matter in paragraph (6)), the number that  
8           were first filed before the start of the then current  
9           fiscal year.

10          (B) With respect to those pending complaints  
11          that were first filed before the start of the then cur-  
12          rent fiscal year—

13               (i) the number of individuals who filed  
14               those complaints, and

15               (ii) the number of those complaints which  
16               are at the various steps of the complaint proc-  
17               ess.

18          (C) Of the total number of complaints pending  
19          in such fiscal year (as described in the parenthetical  
20          matter in paragraph (6)), the total number of com-  
21          plaints with respect to which the agency violated the  
22          requirements of section 1614.106(e)(2) of title 29 of  
23          the Code of Federal Regulations (as in effect on  
24          July 1, 2000, and amended from time to time) by  
25          failing to conduct within 180 days of the filing of



1 such complaints an impartial and appropriate inves-  
2 tigation of such complaints.

3 (c) TIMING AND OTHER REQUIREMENTS.—

4 (1) CURRENT YEAR DATA.—Data posted under  
5 this section for the then current fiscal year shall in-  
6 clude both—

7 (A) interim year-to-date data, updated  
8 quarterly, and

9 (B) final year-end data.

10 (2) DATA FOR PRIOR YEARS.—The data posted  
11 by a Federal agency under this section for a fiscal  
12 year (both interim and final) shall include, for each  
13 item under subsection (b), such agency's cor-  
14 responding year-end data for each of the 5 imme-  
15 diately preceding fiscal years (or, if not available for  
16 all 5 fiscal years, for however many of those 5 fiscal  
17 years for which data are available).

18 **SEC. 302. DATA TO BE POSTED BY THE EQUAL EMPLOY-**  
19 **MENT OPPORTUNITY COMMISSION.**

20 (a) IN GENERAL.—The Equal Employment Oppor-  
21 tunity Commission shall post on its public Web site, in  
22 the time, form, and manner prescribed under section 303  
23 for purposes of this section, summary statistical data re-  
24 lating to—

1           (1) hearings requested before an administrative  
 2       judge of the Commission on complaints described in  
 3       section 301, and

4           (2) appeals filed with the Commission from  
 5       final agency actions on complaints described in sec-  
 6       tion 301.

7       (b) SPECIFIC REQUIREMENTS.—The data posted  
 8       under this section shall, with respect to the hearings and  
 9       appeals described in subsection (a), include summary sta-  
 10      tistical data corresponding to that described in paragraphs  
 11      (1) through (10) of section 301(b), and shall be subject  
 12      to the same timing and other requirements as set forth  
 13      in section 301(c).

14      (c) COORDINATION.—The data required under this  
 15      section shall be in addition to the data the Commission  
 16      is required to post under section 301 as an employing Fed-  
 17      eral agency.

18   **SEC. 303. RULES.**

19       The Equal Employment Opportunity Commission  
 20      shall issue any rules necessary to carry out this title.

      Passed the House of Representatives October 2,  
 2001.

Attest:

JEFF TRANDAHL,

*Clerk.*